

[Cite as *Orr v. Harris*, 2018-Ohio-4798.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107658

DARLLEL B. ORR

RELATOR

vs.

CHAE HARRIS, WARDEN

RESPONDENT

JUDGMENT:
PETITION DISMISSED

Writ of Habeas Corpus
Motion No. 521509
Order No. 522194

RELEASE DATE: November 27, 2018

FOR PETITIONER

Darrell B. Orr, pro se
Inmate No. 663266
Lebanon Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

ATTORNEYS FOR RESPONDENT

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ANITA LASTER MAYS, J.:

{¶1} Petitioner, Darrell B. Orr, seeks release from confinement through the extraordinary writ of habeas corpus. He claims he is being unlawfully detained by respondent warden, Chae Harris, because the trial court in his criminal case lacked jurisdiction to hear evidence related to a face mask found at the location where Orr, and another, murdered the mother of three children while the children were in the next room. Orr's petition is fatally defective for want of jurisdiction. Therefore, we grant respondent's motion to dismiss and dismiss the petition.

I. Facts and Background

{¶2} As previously recited by this court in his direct appeal, Orr and another broke into a home in an attempt to rob the occupants. *State v. Orr*, 8th Dist. Cuyahoga No. 100841, 2014-Ohio-4680. In the process of committing the burglary and murder of one of the occupants, Orr left behind a cell phone and a half-face mask. Police traced the phone back to

him, and DNA recovered from the mask was consistent with a reference sample taken from Orr. For Orr's brutal crimes, he was sentenced to imprisonment for the remainder of his life.

{¶3} On September 10, 2018, Orr filed the instant petition. In opposition, respondent filed a motion to dismiss for lack of jurisdiction. Orr then filed two pleadings in response, asking this court to take judicial notice of certain facts in support of his petition and objections to respondent's motion to dismiss.

II. Jurisdiction

A. Standard of review

{¶4} A motion to dismiss based on a lack of jurisdiction is governed by Civ.R. 12(B)(1).

Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the claim. The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. *Ferren v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 8th Dist. No. 92294, 2009-Ohio-2359, _ 3. In making that determination, a court is "not confined to the allegations of the complaint and it may consider material pertinent to such inquiry without converting the motion into one for summary judgment." *Shockey v. Fouty*, 106 Ohio App.3d 420, 423, 666 N.E.2d 304 [(4th Dist. 1995)].

Lisboa v. Lisboa, 8th Dist. Cuyahoga No. 95673, 2011-Ohio-351, ¶ 29.

B. Law and Analysis

{¶5} In this habeas action, Orr asserts an argument that the trial court or the state lacked jurisdiction to introduce evidence regarding DNA found on the mask because it was not

established that the mask was a criminal tool, or he was not charged with possessing criminal tools. However, this court does not have jurisdiction to address these claims.

{¶6} R.C. 2725.03 provides the appropriate venue for instituting an action for writ of habeas corpus. This statute specifically limits the ability of courts to adjudicate habeas corpus petitions to only those that have jurisdiction over the county in which the institution is located where the inmate is housed:

If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in the custody of the officers of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge. Any writ issued by a court or judge of another county to an officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

Id.

{¶7} Respondent asserts that Orr is housed in a correctional institution in Warren County, Ohio. The address Orr provided to this court also indicates he is housed in Warren County. All of Orr's filings indicate he is housed outside of Cuyahoga County. Orr does not dispute this fact in his opposition to respondent's motion to dismiss.

{¶8} Based on the above statute and Orr's place of incarceration, it is clear that this court does not have jurisdiction to adjudicate Orr's petition. The Supreme Court of Ohio affirmed the dismissal of a petition for writ of habeas corpus that was filed in the wrong

jurisdiction. *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787, 894 N.E.2d 692, __ 17, citing R.C. 2725.03.

{¶9} In opposition to respondent's motion to dismiss, Orr requests that this court transfer the case to the appropriate venue rather than dismiss it outright. Some courts, including this one, have transferred cases to the appropriate venue. *State ex rel. Vereen v. State*, 57 Ohio App.3d 54, 566 N.E.2d 703 (8th Dist.1989). More recently, this court has affirmed the denial of a petition for writ of habeas corpus when filed in the wrong court. *State v. Patterson*, 8th Dist. Cuyahoga No. 105109, 2017-Ohio-2664. This follows a Supreme Court of Ohio decision that reversed the judgment of the Fifth District and remanded the case with instructions to dismiss the petition. *Brown v. Hall*, 123 Ohio St.3d 381, 2009-Ohio-5592, 916 N.E.2d 807. The Tenth District has also held that dismissal without transfer is the appropriate outcome in those situations. *State ex rel. Turner v. Bunting*, 10th Dist. Franklin No. 15AP-605, 2016-Ohio-1325, __ 5, following *Brown*.

{¶10} In some cases, transfer may be appropriate. For instance, when an action is commenced by an inmate housed in an institution in one jurisdiction, but who is then moved to another after the petition is filed, transfer may be appropriate. *See, e.g., Christian v. Gansheimer*, 11th Dist. Ashtabula No. 2007-A-0056, 2007-Ohio-6012, __ 7. Here, that is not the case. Orr has been at all times housed in an institution outside of Cuyahoga County. Therefore, this court declines to transfer the case as Orr requests.

{¶11} Respondent has demonstrated that this court lacks jurisdiction to entertain Orr's petition. Respondent's motion to dismiss must be granted. *See Rockwell v. Geauga Cty. Court of Common Pleas*, 11th Dist. Geauga No. 2005-G-2661, 2005-Ohio-5762, __ 5.

{¶12} Petition dismissed.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, A.J., and
MARY J. BOYLE, J., CONCUR